



**NATIONAL
DEMOCRATIC
INSTITUTE**

FOR INTERNATIONAL AFFAIRS

1717 Massachusetts Avenue N.W.
Fifth Floor
Washington, D.C. 20036
(202) 528-3136 Fax: (202) 939-3166
E-Mail: demos@ndi.org
Home Page: <http://www.ndi.org>

STATEMENT

of

ERIC BJORNLUND

SENIOR ASSOCIATE AND REGIONAL DIRECTOR FOR ASIA

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

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SUBCOMMITTEE ON ASIA AND THE PACIFIC

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Mr. Chairman, members of the subcommittee, thank you for inviting the National Democratic Institute for International Affairs (NDI) here today to comment on the election process in Cambodia and the role of the international community.

The National Democratic Institute has actively supported the development of Cambodia's democratic institutions through work with civic organizations, political parties and the National Assembly since 1992. Especially since the violent ouster of First Prime Minister Ranariddh in July 1997, NDI has closely monitored the political environment in the country. Often in conjunction with the International Republican Institute (IRI), NDI has conducted a series of missions to Cambodia to assess the political environment and electoral preparations over the last 14 months.

NDI re-established an ongoing monitoring presence in Cambodia beginning in late April, and NDI and IRI jointly organized an election observation delegation for the week of the July 26 elections. The delegation included 60 members, counting NDI and IRI staff members, and comprised international election experts, political leaders, democracy activists and regional experts from the United States and seven other countries. On July 28, after the polling and the first phase of the counting, NDI and IRI issued a preliminary statement about the election. Since the election, NDI has maintained a presence in Cambodia to monitor the post-election environment and issued a second post-election statement on August 22.

No election can be viewed in isolation of the political context in which it takes place. In their preliminary statement, NDI and IRI outlined the distinct phases of any election process: the pre-election period, which includes the campaign environment and technical preparations, including voter registration; the balloting on election day; the counting and consolidation of results; and the investigation and adjudication of complaints and the formation of a government. Any assessment of the Cambodian elections must take account of all phases of the process.

Mr. Chairman, we can now see that the election process in Cambodia has fallen short of democratic norms. Events throughout August and September are sadly consistent with the violence and institutional flaws that were apparent in the pre-election period, indicating that the ruling regime has little interest in power sharing, peaceful governance or human rights. The United States and the international community must recommit to unconditional support for genuine democracy in Cambodia during this troubling period.

In my testimony today, I will (1) review again the systemic flaws of the pre-election period, (2) explain the institutional failures of the process after election day, (3) review the violence and climate of intimidation that has prevailed since election day, and (4) comment on the contributions and limitations of the national and international observers.

1. While balloting and initial stages of the vote count went relatively well, the election took place in a highly flawed environment.

In the July 28 preliminary statement, issued two days after polling day, NDI and IRI commented that the voting process was "generally well administered" and the atmosphere on election day was largely "peaceful." The statement also applauded the Cambodian people for turning out in such high numbers on election day in the face of serious obstacles. At that time, the institutes reiterated their serious concerns regarding "violence, extensive intimidation, unfair media access and ruling party control of the administrative machinery that characterized the pre-election period."

Cambodia has been plagued by violence and instability over the last year. After the July 5, 1997, coup d'etat, dozens of opposition members of parliament and party leaders fled the country in fear for their lives, and Second Prime Minister Hun Sen and the Cambodian People's Party (CPP) completely dismantled the infrastructures of opposition political parties. The CPP took advantage of the opposition's absence to further consolidate its control over the military, security forces, civil administration and media. Although opposition leaders were allowed to return to Cambodia in the months before the election, they had to operate within a framework designed and dominated by the CPP.

On July 14, 12 days before polling day, NDI and IRI described the process leading up to the elections as "fundamentally flawed." These flaws included the following:

- Cambodian political parties, election monitoring groups, human rights organizations and the UN Center for Human Rights documented that the pre-election environment was plagued with systematic and widespread political intimidation and violence that may have prevented people from voting for the parties of their choice and affected the ability of opposition parties to compete fairly in the campaign. The UN has documented more than 100 apparently politically motivated killings since July 1997.
- The opposition had no opportunity to participate in the development of the election law or the appointment of the bodies to oversee the elections and resolve disputes. While opposition members of parliament and other political leaders were still in exile, the CPP prepared and enacted the election law and appointed the members of the National Election Commission (NEC).
- The way in which the members of the National Election Commission were selected, as pointed out in a public NDI report in January and in my testimony before this committee in March, raised serious questions about its independence and credibility. Under the new election law, the 11-member NEC was to include representatives from each of the parties represented in the National Assembly and from the NGO sector. But party seats were given to ruling party-backed factions of opposition parties, and the selection of the NGO representative was seriously flawed.

- The Constitutional Council, which is supposed to function as the final arbiter of constitutional and election-related disputes, was not properly constituted. CPP-appointed members control the Constitutional Council, and the Council failed to meet in the pre-election period to address serious and fundamental election-related disputes.
- During the months that the opposition was in exile, Hun Sen and the CPP were able to campaign freely without competition or challenge.
- After the July 1997 coup, the CPP consolidated its control over the media, which restricted coverage of opposition candidates throughout the campaign period. Limited access to broadcast media impeded the ability of opposition parties to reach voters and potential supporters and gave the CPP a substantial advantage. Each of the 39 political parties was allowed one five-minute slot per day, which diluted access of the parties with genuine support, and news coverage of rallies, speeches or other campaign events was heavily biased toward the ruling party.
- Opposition parties were not given sufficient time to rebuild their party membership networks, and CPP resources dwarfed those of the opposition.

It is impossible to measure how or to what extent the larger environmental problems with these elections -- including the climate of impunity and intimidation -- may have affected the outcome.

While the impact of the fundamental flaws in the political environment and the institutional framework may be difficult to measure, they nevertheless affect the integrity and credibility of the process.

2. Events since election day mark a reversion to the systemic flaws evident before the elections.

While the preliminary post-election statement commented positively on the balloting and counting processes, NDI and IRI cautioned that a final assessment of the entire election process was premature pending the final tabulation of results, the processing of complaints and the formation of the next government based on the results of the elections.

Regrettably, post-election developments reveal once again the systemic problems with the election process that were apparent before the elections. Since the vote, NDI's pre-election concerns about the credibility of the bodies responsible for administering the elections and adjudicating disputes have proved well founded.

After the elections, Funcinpec and the Sam Rainsy Party submitted some 800 formal complaints to the NEC. They alleged, among other things, problems with the vote count, including that many party agents were intimidated or denied access to the count. In response, the NEC made a perfunctory attempt between July 30 and August 4 to conduct a recount in just eight of the 11,699 communes in the country. This effort was too limited to yield any significant information, and the

NEC stopped before completing the recount for even those few locations. On August 5, an NEC spokesperson claimed that the alleged problems were not substantiated and announced that the Commission was ceasing all operations. Without even a cursory investigation, other than the entirely inadequate recount, the NEC summarily dismissed all complaints. The NEC also refused to provide official rejection notices to the complainants. This, in turn, jeopardized the parties' ability to take complaints to the Constitutional Council.

The Constitutional Council has reviewed and dismissed only a few, relatively unimportant election complaints. The Council has refused to accept complaints about intimidation of opposition party agents, alleged electoral fraud or the formula by which seats are allocated on the grounds that these complaints were either formally rejected by the NEC or not filed before the deadline. The Council's refusal to even consider such complaints, coupled with the NEC's failure to follow due process in providing the required rejection notices, has eliminated any meaningful opportunity for appeal.

The decision making processes of the NEC and the Constitutional Council lack transparency. The NEC, for example, failed to follow its own procedures or to explain its actions when it adopted a new formula for allocating seats in the National Assembly. Versions of the electoral regulations published on May 6 and May 25 clearly indicated one particular formula. These regulations were not marked as drafts and were widely circulated to party representatives. After a meeting of the NEC on May 29, another version of the regulations, dated that day, was circulated in early June. It has since become clear -- from NEC records and from the accounts of individual commissioners -- that the NEC neither discussed nor properly adopted a new formula, but the new regulations included the now-famous change. No particular effort, such as a letter to parties or a press statement, was made to highlight this significant amendment, and evidently no one from the opposition parties, domestic monitoring groups, international observer organizations or the diplomatic community was aware that there had been a significant change. The new formula gave the CPP five additional seats, compared to what the ruling party would have received under the previous formula, which was enough to give the CPP a majority in the new National Assembly.

With respect to the new formula, there is evidence that NEC advisors were merely trying to correct what they believed to be a technical mistake. And the opposition's other allegations of fraud in the balloting and counting do not appear to be significant enough in their totality to have affected the overall outcome of the election. But the NEC and the Constitutional Council, because they were not legitimately constituted and have been subject to manipulation, lack credibility in their responses to election-related complaints and post-election controversies.

The parties' grievances and allegations deserve due process, including meaningful investigation of credible complaints. Because election-related complaints have not been addressed expeditiously, thoroughly and impartially, there can be little public confidence in the integrity of the overall process.

3. The use of violence and the climate of intimidation continue.

Chaos and violence have marred the post-election period.

On August 20, while Sam Rainsy was inside the Ministry of Interior, unknown persons fired shots and threw a grenade at the front gates of the compound, killing one person. Soldiers threatened and detained Rainsy for three hours.

During the last week of August and first two weeks of September, unprecedented street demonstrations and protests have rocked Phnom Penh. What originally began as a vigil led by Sam Rainsy, and later Prince Ranariddh, outside the National Assembly to insist on a fair investigation into alleged electoral fraud turned into a mass protest against the CPP, Hun Sen and then the Vietnamese in general.

On September 7, in the wake of failed negotiations between party leaders and King Sihanouk in Siem Reap, unidentified assailants threw three grenades into Hun Sen's compound in Phnom Penh. No one was hurt. Hun Sen immediately returned to the capital and blamed the attack on demonstration leaders. In these remarks, he implied that he intended to arrest Sam Rainsy, among others. Sam Rainsy sought refuge in the offices of the UN Secretary-General's Special Representative. On September 8, the national police, led by Hok Lundy, cleared demonstrators from outside the Assembly, using water cannons, electric cattle prods, shots in the air and occasional shots into the crowd. Later that afternoon, one man was killed as police cleared a crowd away from the building in which Rainsy was hiding.

Over the next few days, protestors congregated in the streets outside the US Embassy where police and soldiers fired into crowds that included monks and students. The CPP then began trucking in supporters from outside the city, and violent street fights took place throughout the city. Several ethnic Vietnamese were beaten to death by mobs, and 29 demonstrators, mostly university students, are known to have been detained in the wake of the protests. The UN Center for Human Rights reported that 18 bodies, including those of two monks, have been found floating in the rivers or buried in shallow graves since the government crackdown began. More killings and disappearances are under investigation.

On September 24, rockets exploded near Hun Sen's convoy just after it passed on its way to the ceremony convening the National Assembly at Siem Reap. Although it is unknown who was responsible for these attacks, Hun Sen has publicly accused the opposition of trying to assassinate him. Later that day, according to reports in the Associated Press and the South China Morning Post, Hun Sen declared, "I think if the opposition leaders do not instruct their forces to stop activities which threaten my life, they would die with the most severe suffering."

Negotiations over the formation of the government are clouded by this turbulent atmosphere. The CPP threatened those who did not attend the swearing in of the National Assembly by publicly reminding them that they would lose their immunity and be subject to arrest if they were no longer

members of parliament. When the opposition offered to form a coalition government with the sole demand that Hun Sen not be a part of it, the Second Prime Minister replied, according to the Cambodia Daily, that "If the opposition thinks I'm going to step down they're dreaming. And if they try to dissolve the present government by other means they will face military action."

On September 8, the government issued the first of two orders that prohibited about 300 people, including all the new opposition members of parliament (MPs), all outgoing opposition MPs and several FUNCINPEC senior civil servants from leaving the country. The ban was justified as a means of keeping suspects for the alleged grenade attacks and demonstrations in the country. The UN Human Rights Center condemned this travel ban as a violation of the Cambodian constitution, the fundamental right to freedom of travel and an express commitment of the Cambodia government to the UN Secretary General. The Thai government also publicly criticized this policy.

The recent apparent assassination attempts on Hun Sen, credible or not, also suggest the likelihood of further arrests and detainments.

The post-election chaos, initiated by demands for an investigation of election-related complaints, might well have been avoided if there were credible and functioning institutions to administer the grievance process. But the institutional framework for the election was fatally flawed and failed to address the problems alleged.

It is true that the opposition together received substantially more votes than the CPP and that if Funcinpec and the Sam Rainsy Party had come together before the elections they would have garnered a plurality and had the right to designate the new prime minister. But hypotheticals miss the point. The issue for policy makers is the integrity of the process that took place.

Recent events in Cambodia – problems in the formation of the government, violence in the streets of Phnom Penh and complete failure on the part of the electoral institutions – indicate that the overall process failed. Unfortunately, the polling and counting days now seem to have been the aberration from Cambodia's unfortunate norm of violence, intimidation and instability.

4. Cambodian domestic monitors made a critically important contribution; the record of international observers was mixed.

We should commend the national election monitoring groups -- the Coalition on Free and Fair Elections (COFFEL), the Committee on Free and Fair Elections (COMFREL) and the Neutral and Impartial Committee for Free Elections (NICFEC) -- for their ambitious and effective programs to educate voters and for their vigilance during the balloting and counting processes. Local groups were essential in monitoring and reporting on the pre-election violence, intimidation and institutional proceedings. Domestic monitors were present at a majority of the polling stations and counting stations throughout the country. COFFEL, COMFREL and NICFEC issued statements before and after election day. They agreed that polling and counting days were generally well-conducted and provided the basis for international observers to make similar findings. All three groups, though, also

called on the NEC to conduct thorough, impartial investigations into opposition party complaints and, in fact, offered to assist the NEC with such efforts. They have also condemned the post-election violence and called on all political actors to solve their differences peacefully.

COMFREL, COFFEL and NICFEC continue to play a key role in monitoring the current post-election environment. US assistance helped make these efforts possible, and NDI is proud to have worked with these coalitions, using funds from the National Endowment for Democracy and the US Agency for International Development, for the last three years.

Representatives from overseas governments and intergovernmental organizations who served as election observers faced a serious challenge. On the one hand, they were in Cambodia to observe and impartially assess the election process. On the other hand, many of their members had various diplomatic agendas, including sincere but ultimately profoundly mistaken notions about achieving stability in Cambodia. These roles may have been in tension, or even incompatible, which led to statements that were premature and tended to minimize serious problems with the process.

Moreover, exacerbating the problem posed by these potentially contradictory roles, many observers came from undemocratic countries, such as Burma, China and Vietnam. Representatives from these countries were allowed an equal voice in the assessment of the election process by the Joint International Observer Group (JIOG), which was organized by the United Nations and the European Union. In fact, according to reliable sources, those wanting to portray the elections in the most positive light possible had great influence over the JIOG's assessment. In general, it seemed that many international observers had lowered the bar for Cambodia, indicating that the Cambodian elections need not meet international standards.

Twenty-five Americans participated as "long-term observers" in the JIOG, although the US government announced before the elections that the American contingent would not participate in the preparation of or join the JIOG statement. Those American observers made no public report of their findings or analysis at any time during the process.

In contrast to many other countries, the US has played a principled and important role in standing steadfast against a flawed process in Cambodia by not supporting the bodies and machinery created to supervise and administer the elections and by not jumping to embrace the results. This has sent an important signal about not granting legitimacy to a process that has not earned that legitimacy.

Conclusions

Permit me, Mr. Chairman, to share three general conclusions.

First, the Cambodian elections should be judged against international norms. The Cambodian election process was far from a democratic one and should be no model for future elections. The relative success of the balloting and counting processes does not excuse or overcome

the fundamentally flawed environment in which the election took place. The lack of any meaningful appeals process after election day and the renewed intimidation and use of violence have rendered the overall election process deficient. Accordingly, the new government, regardless of its makeup or the results of ongoing negotiations, has emerged from an undemocratic process.

Second, Cambodia needs to establish independent electoral and judicial institutions and create a system of meaningful checks and balances. Cambodian institutions need to be separated from the government and from CPP control. US assistance has tried to encourage the development of democratic institutional frameworks and rule of law. However, there is a long road ahead, as the ruling party demonstrates flagrant disregard for the principles of due process.

Third, the US should work to establish a more cohesive international response to the flawed elections and climate of impunity that continues to prevail. US leadership made possible the return of the opposition leaders to Cambodia, and US leadership on this issue is critical now. Hun Sen has skillfully exploited differences within the international community, despite the fact that Cambodia is dependent on foreign assistance. The US and other "Friends of Cambodia" should pressure the appropriate authorities to investigate the killings and other human rights abuses and arrest and prosecute those responsible. The US must also be prepared to assist political leaders threatened with politically motivated arrest or prevented from leaving the country. Likewise, Cambodian nongovernmental organizations that have courageously and effectively monitored human rights and the political environment should continue to receive our support.

Rather than putting pressure on the opposition to participate in a coalition government, the international community should put the onus on the CPP to let go of its stranglehold on power. The international community should insist on a coalition that involves genuine power sharing and hold the government that emerges accountable. Accepting a new government in the name of stability in the absence of a genuinely democratic process or addressing the climate of impunity can only lead to further destabilization.

Thank you, Mr. Chairman, for the opportunity to share with you some of my observations on Cambodia